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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/420,945	10/19/1999	STEPHEN C. KENYON	213680.00004	3459

5514 7590 03/23/2005

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/420,945	Applicant(s) KENYON, STEPHEN C.	
	Examiner Reuben M. Brown	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 41.

Claim(s) rejected: 1-40 & 42-51.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


CHRIS GRANT
PRIMARY EXAMINER

ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed 12/15/2004 have been fully considered but they are not persuasive.

Applicant asserts on page 24 that the subject matter from claim 41, which was objected to in the Final Action mailed 8/26/2004, has been incorporated into proposed amendments to independent claims 1, 20, 23 & 27. Examiner respectfully disagrees with this assertion, since the proposed amendments to the above cited claims, merely add the term "joint" to the claims, which then reads "joint probability of correlation values..." and changes the scope of the claims. However, the amendments do not capture the subject recited in claim 41, namely "wherein recognition is designated when the joint probability of multiple feature correlations indicate that random detection is not probable".

Thus, applicant's proposed amendments to claims 1, 20, 23 & 27 include subject matter that raise new issues, and would require further search and/or consideration. Claims 20 & 23 additionally recite "randomly selecting any one of *time interval from* the received data stream".

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Proposed amendments to independent claims 17, 21, 22 & 24 recite, “*summing* the pixel values”, instead of “integrating” or “averaging”. Claim 25 recites, “*sum* the energy extracted ...”, instead of “integrate”. Again, these features raise new issues, and would require further search and/or consideration.

Proposed amendments to claim 19 also recites, “*summing* the energy extracted from each of the plurality of energy bands”. Proposed amendment to claim 26, recites, “according to their information content”, instead of distinctness, which is broader and likewise, requires a further search and/or consideration.

In light of the discussion above, examiner maintains the Final Rejection in the office action mailed, 8/26/2004.

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for formal communications intended for entry)

Or:

(703) 746-6861 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

*Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).*

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Reuben M. Brown whose telephone number is (703) 305-2399.

The examiner can normally be reached on M-F (8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Christopher Grant can be reached on (703) 305-4755. The fax phone numbers for the
organization where this application or proceeding is assigned is (703) 872-9306 for regular
communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the receptionist whose telephone number is (703) 305-4700.

Reuben M. Brown


CHRIS GRANT
PRIMARY EXAMINER